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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 2nd February 2024

No. 13/1/9640-HII(2)-2024/1793.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **15/2019** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AJAY SHARMA S/O LATE SH. VED PARKASH SHARMA R/O HOUSE NO.747, SECTOR 40-A, CHANDIGARH. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS ASSISTANT GENERAL MANAGER (HR & ADMN.). (Management)

AWARD

1. Vide Endorsement No.13/1/9640-HII(2)-2019/15620 Dated 19.09.2019 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Ajay Sharma (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Sh. Ajay Sharma, Son of late Sh. Ved Parkash Sharma, Resident of House No.747, Sector 40-A, Chandigarh (Applicant/Claimant) AND (1) M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat through its Managing Director (2) Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12,

(229)

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Location:

Ground Floor, Dakshin Marg, Sector 25, Chandigarh through its Assistant General Manager (HR & Admn.) (Management) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND Writ Petition (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Amit Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Graphic Designer in the Editorial Department of Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No. 538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being *ultra-virus* as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions

raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Graphic Designer in the Editorial Department of Dainik Bhaskar Newspaper on 05.12.2005. The salary of the claimant was fixed @ ₹ 9,000/- per month including all perks and allowances. Initially he was on probation for 2 months and later on his services were regularised. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Page Designer' which is mentioned in Group 3 of the Schedule - I(b) of functional definition of working journalists. The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of writ petitions by the Apex Court, no payment was except lame excuses given by the management. In the month of February, 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Since the claimant consistently pressing upon his demand as such on 13.12.2019, he was transferred to Bhagalpur, Bihar. The claimant did not join his duties at such a far place so he preferred to give up his papers on 18.02.2020, which were promptly accepted by the management. The claimant is entitled for revised salary and arrears of pay from the management based on recommendations of Majithia Wage Board for the period 11.11.2011 till 31.12.2019. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 31.12.2019, as such the total amount of ₹ 1,17,01,186/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 07.01.2014 to 11.03.2019, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹1,17,01,186/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹1,17,01,186/- as arrears of pay up to 13.12.2019 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. It is further stated that the submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. Besides, the claimant had concealed the material fact that at the time of leaving the managements after putting the resignation, had accepted all the service benefits and received full & final amount from the managements and nothing remained pending / due and as such the present claimant has no right to contest the present reference being not maintainable. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. The claimant has annexed the calculation sheet showing the turnover of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations and has chosen /

opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The management of DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 31.12.2019. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021 :-

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In this case, the applicant is referred by the parties as claimant as well as workman. In order to avoid any irregularity, the applicant is hereinafter referred as claimant.

10. In evidence claimant Ajay Sharma examined AW1 Avdhesh Gaur, who brought the summoned service record of the claimant and proved the copy of the same Exhibit 'AW1/1' to Exhibit 'AW1/19'.

Exhibit 'AW1/1' declaration dated 15.11.2011.

Exhibit 'AW1/2' is resignation dated 18.02.2020.

Exhibit 'AW1/3' is of letter dated Nil regarding the collection of full & final payment.

Exhibit 'AW1/4' is letter dated 07.08.2020 regarding payment of gratuity amounting to ₹ 76,876/-.

Exhibit 'AW1/5' is receipt dated 24.08.2020 regarding payment of ₹ 76,876/-.

Exhibit 'AW1/6' is charge sheet dated 15.06.2019.

Exhibit 'AW1/7' is reply dated 18.06.2019 to the charge sheet.

Exhibit 'AW1/8' is show cause notice dated 28.05.2019.

Exhibit 'AW1/9' is reply dated 30.05.2019 to the show cause notice.

Exhibit 'AW1/10' is appointment letter dated 02.12.2005.

Exhibit 'AW1/11' is letter regarding fixation of salary on 05.12.2005.

Exhibit 'AW1/12' is revised CTC structure with effect from 01.04.2014.

Exhibit 'AW1/13' is annual appraisal along with compensation details for the year 2014-15.

Exhibit 'AW1/14' is annual appraisal along with compensation details for the year 2015-16.

Exhibit 'AW1/15' is annual appraisal along with compensation details for the year 2016-17.

Exhibit 'AW1/16' is annual appraisal along with compensation details for the year 2017-18.

Exhibit 'AW1/17' is appreciation letter dated 25.05.2012.

Exhibit 'AW1/18' is appreciation letter dated 29.07.2013.

Exhibit 'AW1/19' is transfer letter dated 13.12.2019 along with arrears details.

AW1 further deposed that he has not brought the balance sheets pertaining to the years under consideration in the Majithia Wage Board. He has not brought any requisition letter for transfer of the workman in December 2018. Further examination-in-chief of AW1 was deferred for want of balance sheets for the year 2006 to 2011 for DB Corporation and requisition letter for transfer. AW1 when recalled for his remaining examination-in-chief, in his statement recorded on 10.08.2022 stated that he has brought the balance sheet for the year 2006 to 2011 of Dainik Bhaskar unit Chandigarh but not of the entire units of Dainik Bhaskar, which are lying with the corporate office. There is no document such as requisition letter for transfer.

11. The claimant examined himself as AW2 and tendered his affidavit Exhibit 'AW2/A' along with copy of documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW2/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

12. The claimant also examined AW3 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW3/A' along with documents Exhibit 'AW3/1' to Exhibit 'AW3/3'.

Exhibit 'AW3/1' is copy of appointment letter dated 02.12.2005 issued to the claimant Ajay Sharma.

Exhibit 'AW3/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW3/3' is the calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

13. On 03.10.2022 the claimant closed the evidence.

14. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn (CPH2), Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M7'.

Exhibit 'M1' is identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter dated Nil issued in favour of Avdhesh Gaur by Shri Sanjay Gupta - Authorised Signatory DB Corp. Ltd.

Exhibit 'M3' is resignation letter dated 18.02.2020 of Ajay Sharma along with its acceptance through e-mail dated 07.03.2020.

Exhibit 'M4' is full & final slip for the month of March, 2020.

Exhibit 'M5' is statement of account of Dainik Bhaskar bearing Account No.0721103000000082 for dated 09.06.2020 incorporating relevant entry at Sr. No.2 relating to Ajay Sharma.

Exhibit 'M6' is forwarding letter dated 07.08.2020 relating to the subject of DD against gratuity claim of employee No.12289, Member name Ajay Sharma along with Demand Draft No.015723 dated 05.08.2020 for sum of ₹ 76,876/- drawn on IDBI Bank in favour of Ajay Sharma.

Exhibit 'M7' is declaration dated 15.11.2011.

15. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that MW1 has tendered full & final slip for the month of March 2020 vide Exhibit 'M4', although the same is put as Exhibit 'M3' in cross-examination of AW2).

16. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

17. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

18. Onus to prove issue No.1 is on the workman.

19. Under this issue, the claimant Ajay Sharma examined himself as AW2 and vide his affidavit Exhibit 'AW2/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW2 has supported his oral version with documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

20. In order to prove the calculation of the arrears claimed, claimant examined AW3 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW3/A' has proved that the calculation sheet prepared by him. AW3 has supported his oral version with documents Exhibit 'AW3/1' to Exhibit 'AW3/3' (as detailed).

21. The claimant has also examined AW1 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW1/1' to Exhibit 'AW1/19'.

22. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any

ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that at the time of leaving the managements after putting the resignation dated 07.03.2020 had accepted all the service benefits and also has received full & final amount from the managements and nothing remaining pending / due and as such the present claimant has no right to contest the present claim petition being not maintainable. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M7'.

23. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Graphic Designer in the Editorial Department Dainik Bhaskar Newspaper on 05.12.2005. The salary of the claimant was fixed @ ₹ 9,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The fact remained undisputed between the parties that the claimant on 07.03.2020 had tendered his written resignation by sending email dated 07.03.2020 which was accepted by the management. (it is pertinent to mention here that AW1 Avdhesh Gaur in his examination-in-chief has stated that copy of resignation dated 18.02.2020 is Exhibit 'AW1/2' whereas the perusal of document Exhibit 'AW1/2' would reveal that the resignation tendered by the claimant through email is of dated 07.03.2020. Thus, the date of resignation is incorrectly mentioned as 18.02.2020 in the examination-in-chief of AW1 whereas the correct date of resignation is 07.03.2020. Moreover, it is settled law that in case of conflict between oral and documentary evidence, the documentary evidence shall prevail over the oral evidence.). AW2 / Ajay Sharma in his cross-examination admitted as correct that on 07.03.2020, he resigned from the job with the management by sending email dated 07.03.2020. The hard copy of email dated 07.03.2020 is Exhibit 'M2'. The claimant in his resignation letter dated 07.03.2020 Exhibit 'AW1/2' / Exhibit 'M2' addressed to Manoj Mehta, Sate Head-HR & Admn, Dainik Bhaskar Group has mentioned as below :-

"It is in reference to the subject cited above, it is humbly submitted that ever since I had filed case for recovery of my arrears as recommended by Majithia Wage Board before Assistant Labour Commissioner, U.T. Chandigarh, I have been targeted and exploited by you and the management. I have been served with show cause notice for a mistake which I did not commit and the entire exercise culminated into warning just two days prior to my transfer to Bhagalpur, Bihar. My leave applications were left pending which resulted in deduction of my salary causing me monetary loss. I have been mentally tortured. The management has not even considered my 15 years of long dedicated service before transferring me without any basis. My work login account, official email id and attendance application were closed prior to my transfer. It may not out of place to mention here that closure of all abovementioned accounts virtually tantamount of termination of service.

I am on roll as neither can I join the service at Bhagalpur such a long distanced place nor my financial dues have been cleared.

Therefore, I have been compelled to resign from the service so as to enable myself to earn my livelihood from some other sources. Thus, it is requested that my resignation may be accepted forthwith."

24. AW2 Ajay Sharma in his cross-examination stated that he has written in Exhibit 'M2' that ever since he had filed case for recover of his arrears as recommended by Majithia Wage Board, before Assistant Labour Commissioner, U.T. Chandigarh but he has not specifically mentioned that he reserves his right to claim arrears according to the recommendations of Majithia Wage Board. AW2 admitted as correct that vide letter dated Nil, copy of which is Exhibit 'M4' his claim of gratuity was settled. AW2 voluntarily stated that the claim of difference of pay as per recommendations of Majithia Wage Board was not settled. AW2 admitted as correct that vide letter dated 07.08.2020 copy of which is Exhibit 'M5', gratuity was paid to him. Copy of demand draft dated 05.08.2020 vide which payment of ₹ 76,876/- towards gratuity was paid to him is Exhibit 'M6'. AW2 denied the suggestion was wrong that he has not challenged his full & final payment of dues and gratuity vide Exhibit 'M3' and Exhibit 'M4'. AW2 voluntarily stated that he has challenged the same before this Court in the present case. For the purpose of confrontation, Learned Representative for the management has drawn the attention of the witness towards statement of claim where Exhibit 'M3' and Exhibit 'M4' are not challenged. AW2 again voluntarily stated that the alleged full & final payment was paid to him during the pendency of the present case. He has not challenged Exhibit 'M3' and Exhibit 'M4', however, he will challenge the same if needed. AW2 admitted as correct that he was served with a show cause notice dated 28.05.2019 Exhibit 'M7' to which he filed reply. AW2 voluntarily stated that the said show cause notice was issued to him after filing of the present case.

25. To my opinion, from the aforesaid version of AW2 it is duly proved on record that he tendered resignation voluntarily on 07.03.2020. The plea taken in the resignation letter that he cannot join the service at Bhagalpur (Bihar) being a distant place is unjustified because AW2 in his cross-examination admitted as correct that his post with the management was transferable. Moreover, perusal of claimant's appointment letter dated 02.12.2005 / Exhibit 'AW1/10' would show that as per the requirement of management, his services can be transferred to any other unit of Dainik Bhaskar. In view of the above said clause of the appointment letter Exhibit 'AW1/10', the management is well within in its right to transfer the claimant to another unit of Dainik Bhaskar. Furthermore, the claimant's witness AW1 Avdhesh Gaur in his cross-examination admitted as correct that all the posts with the management are transferable and any employee working with the management can be transferred from one location to other location of the management.

26. As far as show cause notice dated 28.05.2019 / Exhibit 'M7' is concerned, it is own plea of the claimant taken in his resignation letter Exhibit 'AW1/2' that he was issued warning. It is not the plea of the claimant that reply filed by him to show cause notice was not considered by the management. Copy of show cause notice dated 28.05.2019 and copy of reply dated 30.05.2019 to show cause notice has been proved into evidence by the claimant vide Exhibit 'AW1/8' and Exhibit 'AW1/9' respectively. Under these circumstances, it cannot be said that the claimant had any compelling circumstances to tender his resignation.

27. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 till January 2019 as per notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

28. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the said notification, which is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

29. The claimant by examining AW1 Avdhesh Gaur has brought into evidence the claimant's declaration dated 15.11.2011 / Exhibit 'AW1/1' under para 20(j) of the notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the management has also proved into evidence the claimant's declaration dated 15.11.2011 vide Exhibit 'M1'. Learned Representative for the claimant argued that declaration Exhibit 'AW1/1' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'AW1/1' / Exhibit 'M1' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the managements that the declaration Exhibit 'AW1/1' / Exhibit 'M1' is dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been made upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the managements referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

30. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'AW1/1' / Exhibit 'M1' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW2 when put to cross-examination stated that he identifies his signatures on declaration dated 15.11.2011 and admit the contents of said declaration. Copy of same is Exhibit 'M1' (it is pertinent to mention here that declaration dated 15.11.2011 is put in cross-examination of AW2 as Exhibit 'M1' and the copy of the same declaration is proved by the management in its evidence vide Exhibit 'M7'). AW2 in his cross-examination admitted as correct that till date he has not challenged declaration Exhibit 'M1' before any authority except the present case. After going through the judicial file, AW2 stated that in the present case also the declaration Exhibit 'M1' has not been challenged. AW2 voluntarily stated that he has verbally challenged the declaration Exhibit 'M1' before this Court. To my opinion the version of AW2 that he has verbally challenged declaration Exhibit 'M1' before this Court is not acceptable as the claimant is required to challenge any document in writing under the relevant provisions of law. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management

had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. From the aforesaid version of AW2, it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'AW1/1' / Exhibit 'M1' / Exhibit 'M7' is signed by the claimant with his free will and consent.

31. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. It is not the requirement of para 20(j) of notification dated 11.11.2011 that the declaration must be countersigned by the employer or second party.

32. The resignation dated 07.03.2020/ Exhibit 'AW1/2' which is accepted by the management is also proved to have been tendered by the claimant on account of his inability to join at transferred place / unit of Dainik Bhaskar i.e. Bhagalpur (Bihar) and not under any kind of pressure or threat. As already discussed the job of the claimant was transferrable as per the terms & conditions of his appointment letter Exhibit 'AW1/10'. After the tendering of resignation Exhibit 'AW1/2' / Exhibit 'M2', the claimant has issued full & final receipt for the month of March 2020 / Exhibit 'M3', settled his claim of gratuity as detailed in the expenses account of Dainik Bhaskar Corporation Ltd. i.e. Exhibit 'M4'. Furthermore, AW2 in his cross-examination has admitted as correct that vide letter dated 07.08.2020 / Exhibit 'M5' gratuity was paid to him and the copy of the demand draft dated 05.08.2020 vide which payment of ₹76,876/- towards was paid to him is Exhibit 'M6'. As already discussed above, the claimant has not challenged his full & final payment of dues Exhibit 'M3' and gratuity / Exhibit 'M4' before any authority and has taken the plea that he will challenge the same, if needed. It is also not the case of the claimant that he had received the payment towards full & final settlement and gratuity under protest. AW2 in his cross-examination has stated that after acceptance of his resignation by the management, dues were transferred in his account which were not returned by him till date. Furthermore, AW1 admitted as correct that the workman has resigned from job vide resignation dated 18.02.2020 which was accepted by the management and thereafter full & final payment was made to the claimant which was duly accepted by the claimant. As per the record the claimant has not reserved his right to claim the benefits of Majithia Wage Board at the time of receiving full & final payment. As per record, the full & final amount was received by the claimant without any protest and voluntarily. AW1 further stated that copy of resignation of Ajay Sharma and full & final payment along with payment of gratuity are Exhibit 'M1' to Exhibit 'M3'. From the aforesaid version of AW1 and AW2 it is duly proved on record that the claimant has voluntarily exercised option under para 20(j) of the Majithia Wage Board recommendations by way of declaration dated 15.11.2011 / Exhibit 'AW1/1' / Exhibit 'M1' and voluntarily resigned from his service by way of resignation through email dated 07.03.2020 vide Exhibit 'AW1/2' / Exhibit 'M2' and thereafter issued receipt of full & final payment Exhibit 'M3' and received payment of gratuity as per accounts statement Exhibit 'M4', without any protest and without reserving any right to claim benefits of the Majithia Wage Board recommendations. Therefore, the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

33. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

34. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2 :

35. Onus to prove this issue is on the managements.

36. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below :-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

37. In the present case, it is undeniable fact that the claimant was appointed to the post of Graphic Designer. The management has failed to bring on record any oral or documentary evidence to show that the claimant was discharging any kind of supervisory or managerial or administrative functions. In cross-examination of AW2 Ajay Sharma no suggestion has been put that he was performing any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of

the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

38. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5 :

39. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

40. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

41. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4 :

42. Onus to prove this issue is on the managements.

43. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 13.09.2019. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

44. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 27.03.2019 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 13.09.2019. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

45. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

46. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 06.11.2023

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh,
UID No .PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 2nd February 2024

No. 13/1/9750-HII(2)-2024/1795.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **60/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JASPREET SINGH R/O VILLAGE ALIPUR SOUNDHIA, POST OFFICE MALKO MAJRA, DISTRICT & TEHSIL FATEHGARH SAHIB. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE OFFICER-CUM-AGM HR & ADMN. (Management)

AWARD

1. Vide Endorsement No.13/1/9750-HII(2)-2020/11472 Dated 28.08.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Jaspreet Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to namely Sh. Jaspreet Singh, Resident of Village Alipur Soundhia, Post Office Malko Majra, District & Tehsil Fatehgarh Sahib (Workman/ applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its Chief Executive officer-cum-AGM HR & Admn. (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Unit Attendant with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board

which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-virus as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Unit Attendant in the Dainik Bhaskar Newspaper at Sirhind on 01.06.2010. The salary of the claimant was fixed @ ₹ 6,700/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. Work & conduct of the claimant has been further appreciated in as much as the service record of the claimant has been exemplary good as no complaint whatsoever has ever been reported to the management from any quarter. The claimant has been earning his annual increments well on time apart from the annual bonus. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Unit Attendant' which is mentioned in Group 6 Factory Staff of the Schedule - III (Grouping of Non-journalists Newspaper Employees - Factory Staff). The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of writ petitions by the Apex Court, no payment was except lame excuses given by the management. In the month of April, 2017 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No.2, however, management No.2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. Consequently, the claimant was forced to resign from his job w.e.f. 20.09.2019. After putting his papers, the claimant has been on road without any job and has become burden on his family. The claimant was the only bread winner of his family and as such the entire family has been depending upon legitimate arrears of the claimant which is to be paid by the management. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 20.09.2019, as such the total amount of ₹ 67,00,100/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 07.01.2014 to 20.09.2019, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 67,00,100/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 67,00,100/- as arrears of pay up to 20.09.2019 on account of

implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. It is further stated that the submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. Besides, the claimant had concealed the material fact that at the time of leaving the managements after putting the resignation, had accepted all the service benefits and received full & final amount from the managements and nothing remained pending / due and as such the present claimant has no right to contest the present reference being not maintainable. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void ab-initio. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had

already received the wages as per para 20(j) of the Majithia Wage Board recommendations and has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The management of DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 20.09.2019. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 27.08.2021 :-

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence, claimant Jaspreet Singh examined AW1 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'W1/1' to Exhibit 'W1/10'.

Exhibit 'W1/1' is declaration dated 15.11.2011 of the claimant.

Exhibit 'W1/2' is increment letter dated 28.05.2014 of the claimant.

Exhibit 'W1/3' is appraisal letter dated 29.07.2015 of the claimant for the financial year 2014-15.

Exhibit 'W1/4' is appraisal letter dated 31.05.2016 of the claimant for the financial year 2015-16.

Exhibit 'W1/5' is appraisal letter dated 30.08.2018 of the claimant for the financial year 2017-18.

Exhibit 'W1/6' is appraisal letter dated 30.04.2019 of the claimant for the financial year 2018-19.

Exhibit 'W1/7' is no due clearance form dated Nil.

Exhibit 'W1/8' is resignation dated 06.09.2019.

Exhibit 'W1/9' is gratuity claim form along with demand draft and its acknowledgement.

Exhibit 'W1/10' is set of full & final payment of ₹19,687/-.

10. The claimant examined himself as AW2 and tendered his affidavit Exhibit 'AW2/A' along with copy of documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW2/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

11. The claimant also examined AW3 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW3/A' along with documents Exhibit 'AW3/1' to Exhibit 'AW3/3'.

Exhibit 'AW3/1' is copy of appraisal letter dated 30.08.2018 for financial year 2017-18 issued to claimant Jaspreet Singh.

Exhibit 'AW3/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW3/3' is the calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

12. On 06.04.2022 the Learned Representative for claimant closed the evidence on behalf of the claimant-workman.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn (CPH2), Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M7'.

Exhibit 'M1' is identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter dated Nil issued in favour of Avdhesh Gaur by Shri Sanjay Mohanbhai Gokhale - Authorised Signatory DB Corp. Ltd.

Exhibit 'M3' is resignation letter dated 06.09.20219 with acceptance dated 06.09.2019.

Exhibit 'M4' is full & final slip for the month of October, 2019 along with cheque bearing No.572410 dated 14.10.2019 for the sum of ₹19,687/-.

Exhibit 'M5' is full & final receipt dated 01.11.2019.

Exhibit 'M6' is payment advice dated 07.01.2020.

Exhibit 'M7' is declaration dated 15.11.2011 of the claimant.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 :

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Jaspreet Singh examined himself as AW2 and vide his affidavit Exhibit 'AW2/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW2 has supported his oral version with documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW3 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW3/A' has proved that the calculation sheet prepared by him. AW3 has supported his oral version with documents Exhibit 'AW3/1' to Exhibit 'AW3/3' (as detailed).

20. The claimant has examined AW1 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'W1/1' to Exhibit 'W1/10'.

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that at the time of leaving the managements after putting the resignation dated 06.09.2019 had accepted all the service benefits and also has received full & final amount from the managements and nothing remaining pending / due and as such the present claimant has no right to contest the present claim petition being not maintainable. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India as prior to passing of judgment by the Hon'ble Apex Court, the claimant had himself resigned from service and had also received full & final payment from the managements. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M7'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Unit Attendant in the Dainik Bhaskar Newspaper on 01.06.2010. The salary of the claimant was fixed @ ₹ 6,700/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The fact remained undisputed between the parties that the claimant had tendered his written resignation from his job w.e.f. 20.09.2019. AW2 / Jaspreet Singh in his cross-examination admitted as correct that Exhibit 'W1/8' is the resignation letter submitted by him to the management and he identify the signature. AW2 admitted as correct that his Reporting Manager has also forwarded his resignation letter Exhibit 'W1/8' vide email dated 11.09.2019.

23. The claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 20.09.2019 as per notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the said notification, which is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. In the present case, the claimant by examining AW1 Avdhesh Gaur has brought into evidence the claimant's declaration dated 15.11.2011 / Exhibit 'W1/1' under para 20(j) of the notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the management has also proved into evidence the claimant's declaration dated 15.11.2011 vide Exhibit 'M7'. Learned Representative for the claimant argued that declaration Exhibit 'W1/1' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'W1/1' / Exhibit 'M7' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'W1/1' / Exhibit 'M7' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been made upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the managements referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'W1/1' / Exhibit 'M7' is signed by the claimant under pressure is devoid of merits because the claimant / AW2 when put to cross-examination stated that he identify his signatures on the declaration form, which is Exhibit 'W1/1'. He has not gone through the contents of the same but he has signed the said document on his own. AW2 has stated that he is 12th pass from Punjabi Medium. He is also conversant with the English language little bit. The aforesaid version of AW2 would suggest that AW2 has admitted his signatures on declaration dated 15.11.2011 / Exhibit 'W1/1'. The plea taken by AW2 that he has not gone through the contents of the declaration before signing the same is devoid of merits as the claimant is literate person having

knowledge of English language. The declaration dated 15.11.2011 is drafted in English and signed by the claimant in English. No man of ordinary prudence would sign any document without going through the contents thereof. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. From the aforesaid version of AW2 it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'W1/1' / Exhibit 'M7' is signed by the claimant with his free will and consent and with knowledge of the contents of the same.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the respondents-managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. It is not the requirement of para 20(j) of notification dated 11.11.2011 that the declaration must be countersigned by the employer or second party.

28. The resignation dated 06.09.2019 bearing endorsement of acceptance Exhibit 'W1/8' / Exhibit 'M3' is also proved to have been tendered by the claimant on account of his family circumstances and not under any kind of pressure or threat. In the resignation letter Exhibit 'W1/8' / Exhibit 'M3' the claimant has mentioned that due to family circumstances he is incapable of performing his duties, therefore he intends to resign. At the most he can perform duty up to 20.09.2019. Therefore, his resignation may be accepted. After the tendering of resignation Exhibit 'W1/8' / Exhibit 'M3', the claimant has issued receipt dated 01.11.2019 / Exhibit 'W1/10' / Exhibit 'M5' of full & final payment. At the time of issuing receipt Exhibit 'W1/10' / Exhibit 'M5', the recommendations of the Majithia Wage Board were already notified (i.e. w.e.f. 11.11.2011). At the time of tendering the resignation Exhibit 'W1/8' / Exhibit 'M3' and at the time of issuing receipt of full & final payment / Exhibit 'W1/10' / Exhibit 'M5', the claimant did not reserve his right to claim the benefits of the Majithia Wage Board. The receipt Exhibit 'W1/10' / Exhibit 'M5' was not issued under protest. In this regard claimant / AW2 in his cross-examination stated that he identify his signatures on full & final receipt Exhibit 'W1/10'. AW2 admitted as correct that he has received his full & final payment vide account payee cheque No. 572410 dated 14.10.2019 amounting to ₹19,687/-. AW2 admitted as correct that his resignation and full & final payment was received by him voluntarily without any protest. From the aforesaid version of AW2 it is duly proved on record that the claimant has voluntarily exercised option under para 20(j) of the Majithia Wage Board recommendations by way of declaration dated 15.11.2011 / Exhibit 'W1/1' / Exhibit 'M7' and voluntarily resigned from his service by way of resignation dated 06.09.2019 vide Exhibit 'W1/8' / Exhibit 'M3' and thereafter issued receipt of full & final payment Exhibit 'W1/10' / Exhibit 'M5' without any protest and without reserving any right to claim benefits of the Majithia Wage Board recommendations. Therefore, the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

29. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

30. Accordingly, this issue is decided against the claimant-workman and in favour of the management No. 1 & 2.

Issue No. 2 :

31. Onus to prove this issue is on the managements.

32. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below :-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

33. In the present case, it is undeniable fact that the claimant was appointed to the post of Unit Attendant. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

34. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5 :

35. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

36. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

37. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4 :

38. Onus to prove this issue is on the managements.

39. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 28.08.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

40. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 09.12.2019 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 28.08.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

41. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

42. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh,

UID No .PB0152.

Dated : 06.11.2023

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Balwant Kumar, S/o Heera Lal, R/o H. No. 508, Sector 18-B, Chandigarh, have changed my name from Balwant Kumar to Balwant.

[187-1]

I, Rajesh Saini, S/o Ishwar Chand Saini, R/o H. No. 1334, Deep Complex, Hallo Majra, Chandigarh, changed my name Rajesh Kumar Saini.

[188-1]

I, Sukhbir Kaur, W/o Ranbir Singh, # 3049, Housing Board Colony, Dhanas, Chandigarh, have changed my name to Sukhvir Kaur.

[189-1]

I, Kajal *alias* Sunita Devi, W/o Vijay Kumar, House No. 37, S.Q., Sector 14, Panjab University, Chandigarh, have changed my name to Sunita Devi.

[190-1]

I, Archana, W/o Asheesh Kumar Pal, r/o 3083, Sector 15-D, Chandigarh, have changed my name to Archana Pal.

[191-1]

I, Geetu Gupta, D/o Sh. Sanjay Gupta, W/o Sh. Parul Khanna, R/o # 2022, Sector 15-C, Chandigarh, have changed my name to Geetu Khanna.

[192-1]

I, Paramjit Kaur, W/o Jagmohan Singh, R/o # 1252, Phase-II, Ind. Area, Ramdarbar Colony, Chandigarh, have changed my name from Paramjeet Kaur to Paramjit Kaur. All concerned please note.

[193-1]

I, Avishek, s/o Yogender Sharma, R/o # 424/2, Sector 45-A, Chandigarh, have changed my name from Avishek to Avishek Kumar.

[194-1]

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